

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

HARRY KENNETH WAYMOTH,

Plaintiff,

v.

STEVEN SINCLAIR,

Defendant.

NO. 4:20-CV-5224-TOR

ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT, GRANTING  
DEFENDANT'S CROSS MOTION  
FOR SUMMARY JUDGMENT, AND  
DENYING PLAINTIFF'S MOTION  
TO CONTINUE

BEFORE THE COURT are Plaintiff's Motion for Summary Judgment (ECF No. 18), Defendant's Cross Motion for Summary Judgment (ECF No. 21), and Plaintiff's Motion for Continuance and to Compel Required Documents (ECF No. 29). These matters were submitted for consideration without oral argument. The Court has reviewed the record and files herein, and is fully informed. For the reasons discussed below, Plaintiff's Motion for Summary Judgment (ECF No. 18) is **DENIED**, Defendant's Cross Motion for Summary Judgment (ECF No. 21) is

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1 **GRANTED**, Plaintiff's Motion for Continuance and to Compel Required  
2 Documents (ECF No. 29) is **DENIED**.

### 3 **BACKGROUND**

4 Plaintiff is incarcerated in Washington State at the Coyote Ridge Corrections  
5 Center. ECF No. 9. Plaintiff challenges the facility's cross-gender pat search  
6 policy. *Id.* On November 18, 2020, proceeding *pro se* and *in forma pauperis*,  
7 Plaintiff filed his initial complaint against Defendant Washington State Department  
8 of Corrections ("DOC"). ECF No. 1. On December 23, 2020, the Court ordered  
9 Plaintiff to amend or voluntarily dismiss his complaint. ECF No. 8. On February  
10 2, 2021, Plaintiff filed his first amended complaint against Defendants Steven  
11 Sinclair, Charlotte Headley, and Daniel Hollibaugh alleging two Counts: Count 1,  
12 cruel and unusual punishment by Hollibaugh; and Count 2, equal protection under  
13 law by all three named Defendants. ECF No. 9. On March 23, 2021, the Court  
14 dismissed Defendants Headley and Hollibaugh (thus, necessarily dismissing Count  
15 1, which was only alleged against Hollibaugh). ECF No. 10. On May 18, 2021,  
16 Sinclair, the only remaining Defendant, answered the amended complaint. ECF  
17 No. 13.

18 On August 20, 2021, Plaintiff filed the present motion for summary  
19 judgment. ECF No. 18. Defendant responded and cross-moved for summary  
20 judgment. ECF No. 21. Defendant provided Plaintiff with the required notice to

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1 *pro se* litigants to respond to the cross motion for summary judgment. ECF No.  
2 24. Plaintiff filed a response to Defendant's motion, ECF No. 25, as well as a  
3 motion to continue to obtain certain documents, ECF No. 29. Defendant filed a  
4 response to Plaintiff's second motion to continue. ECF No. 30.

5 The facts alleged are straightforward and not in dispute.<sup>1</sup> Coyote Ridge  
6 Corrections Facility has the following DOC Policy 420.310 on routine pat  
7 searches, which serves the essential purpose of maintaining safety and security  
8 within DOC facilities. ECF No. 23 at 3, ¶ 5. The policy states:

9 Pat searches will be conducted by trained employees/contract staff.  
10 Pat searches of female offenders will only be conducted by female  
11 employees/contract staff, except in emergent situations .... When a  
12 male employee/contract staff pat searches a female offender, a report  
will be completed in the Incident Management Reporting System  
(IMRS) before the end of shift. The distribution will include the  
PREA Coordinator.

13 ECF No. 18 at 1. The facility does not have a parallel policy on cross-gender  
14 searches for male offenders. *Id.*

15  
16 <sup>1</sup> Plaintiff failed to submit a statement of material facts not in dispute to  
17 support his motion for summary judgment. LCivP 56(c)(1)(A). As *pro se*  
18 pleadings are construed liberally, the Court considers Plaintiff's facts asserted in  
19 the motion as well as Defendant's statement of material facts in support of the  
20 cross motion for summary judgment.

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1 of evidence in support of the plaintiff's position will be insufficient; there must be  
2 evidence on which the jury could reasonably find for the plaintiff." *Id.* at 252.

3 For purposes of summary judgment, a fact is "material" if it might affect the  
4 outcome of the suit under the governing law. *Id.* at 248. Further, a dispute is  
5 "genuine" only where the evidence is such that a reasonable jury could find in  
6 favor of the non-moving party. *Id.* The Court views the facts, and all rational  
7 inferences therefrom, in the light most favorable to the non-moving party. *Scott v.*  
8 *Harris*, 550 U.S. 372, 378 (2007). Summary judgment will thus be granted  
9 "against a party who fails to make a showing sufficient to establish the existence of  
10 an element essential to that party's case, and on which that party will bear the  
11 burden of proof at trial." *Celotex*, 477 U.S. at 322.

12 "Courts should construe liberally motion papers and pleadings filed  
13 by *pro se* inmates and should avoid applying summary judgment rules  
14 strictly." *Thomas v. Ponder*, 611 F.3d 1144, 1150 (9th Cir. 2010). "This rule  
15 exempts *pro se* inmates from *strict* compliance with the summary judgment rules,  
16 but it does not exempt them from *all* compliance." *Soto v. Unknown Sweetman*,  
17 882 F.3d 865, 872 (9th Cir. 2018) (emphasis in original).

## 18 **B. Equal Protection**

19 Plaintiff moves for summary judgment on his equal protection claim on the  
20 grounds that "the policy denying protection of cross-gender pat searches to male

1 offenders violates the Equal Protection” requirements of the (1) Universal  
2 Declaration of Human Rights, (2) Fourteenth Amendment of the United States  
3 Constitution and (3) Washington State Constitution Article I §§ 12, 29, Article  
4 XXXI § 1. ECF No. 18 at 1-2. Defendants cross-move for summary judgment on  
5 the same issue under Plaintiff’s claim under the Fourteenth Amendment, seeking  
6 dismissal with prejudice. ECF No. 21 at 5.

7 *1. Applicable Law*

8 As an initial matter, Plaintiff’s amended complaint states the cause of action:  
9 “Right to equal protection under law.” ECF No. 9 at 6. The Court construes this  
10 as a Section 1983 claim for violation of the Fourteenth Amendment of the United  
11 States Constitution. *See Graham v. Connor*, 490 U.S. 386, 393-94 (1989).  
12 Plaintiff alleges rights under the Universal Declaration of Human Rights and  
13 Washington State Constitution for the first time on summary judgment, with no  
14 briefing of the standards involved. ECF No. 18 at 1-2. The Court finds that  
15 Plaintiff has failed to state any factual allegations for claims arising under the  
16 treaty or state constitution, and determines they are irrelevant to this federal civil  
17 rights lawsuit for which this Court has jurisdiction.

18 *2. Fourteenth Amendment*

19 Plaintiff moves for summary judgment in favor of his equal protection claim  
20 under the Fourteenth Amendment of the United States Constitution. ECF No. 18 at

2. Defendant cross-moves for summary judgment on this claim. ECF No. 21.

“The Equal Protection Clause of the Fourteenth Amendment commands that no State shall ‘deny to any person within its jurisdiction the equal protection of the laws,’ which is essentially a direction that all persons similarly situated should be treated alike.” *Harrison v. Kernan*, 971 F.3d 1069, 1075 (9th Cir. 2020) (internal citation omitted). In order to state a Section 1983 claim based on an equal protection violation, the plaintiff “must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class.” *Thornton v. City of St. Helens*, 425 F.3d 1158, 1166 (9th Cir. 2005). “The first step in equal protection analysis is to identify the [defendants’ asserted] classification groups.” *Id.* (internal citation and quotation marks omitted). The groups must be made up of similarly situated persons. *Id.* at 1167.

The Ninth Circuit recently held that intermediate scrutiny applies to prison regulations that facially discriminate on the basis of gender, so that “such regulations are constitutional only if the government demonstrates they serve[] important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.” *Harrison*, 971 F.3d at 1071 (citation and quotation marks omitted). When gender-based distinction are made by prison officials, courts should not disregard the special difficulties that arise in the prison context.” *Id.* at 1079 (citation and quotation marks omitted).

1           1. *Similarly Situated Individuals*

2           Plaintiff's motion cites to no evidence that male and female inmates are  
3 similarly situated. *See* ECF No. 18. In his reply, Plaintiff alleges he is similarly  
4 situated to female inmates because he has been the victim of sexual assault. ECF  
5 No. 26 at 3. Plaintiff also submits declarations from two inmates who identify as  
6 transgender, who were able to give a preference of an officer's gender who  
7 conducts their pat searches. ECF No. 25 at 7-8. Even taking Plaintiff's own  
8 alleged personal sexual assault history as true, the group is not similarly situated  
9 based on actual history of sexual assault – it is the propensity to disproportionately  
10 experience sexual assault that distinguishes the group. *See Laing v. Guisto*, 92 F.  
11 App'x 422, 423 (9th Cir. 2004) (citing *Jordan v. Gardner*, 986 F.2d 1521, 1526,  
12 n.5 (9th Cir. 1993) (“[B]ecause women are disproportionately victims of rape and  
13 sexual assault, women have a stronger incentive to be concerned with sexual  
14 behavior.... Men, who are rarely victims of sexual assault, may view sexual  
15 conduct in a vacuum without a full appreciation of the social setting or the  
16 underlying threat of violence that a woman may perceive.”). Similarly, Plaintiff  
17 fails to demonstrate how he is similarly situated to transgender inmates.

18           Plaintiff's evidence is insufficient to demonstrate male inmates are similarly  
19 situated to female inmates with respect to pat searches by guards of the opposite  
20 sex. Even if Plaintiff were to establish that he is similarly situated, Plaintiff creates



1 no issue of material fact as whether DOC's policy is substantially related to an  
2 important government objective.

3 2. *Substantially Related Means for Important Government Objective*

4 "Reduction of the disparity in economic condition between men and women  
5 caused by the long history of discrimination against women has been recognized as  
6 such an important governmental objective." *Califano v. Webster*, 430 U.S. 313,  
7 317 (1976).

8 Defendant asserts that the considerations for the pat search policy include  
9 weighing the rights of inmates, the institutional need for security, the employment  
10 rights of corrections officers, and the applicable state and federal laws. ECF No.  
11 21 at 10. The vast majority of individuals incarcerated in DOC are male. *Id.* Out  
12 of the twelve DOC facilities, only two facilities exclusively house females. *Id.* at  
13 10-11. If female officers are not able to conduct pat searches at the ten facilities  
14 housing males, employment opportunities would be "significantly diminished." *Id.*  
15 at 11. Moreover, prison resources and security would be disrupted if male officers  
16 were required to respond in place of a female officer every time a pat search of a  
17 male inmate were required. *Id.*

18 The Court finds there are no issues of material fact as to whether DOC's  
19 gender-based policy on pat searches substantially serves an important government  
20 interest in promoting equal employment opportunities to female officers and

1 maintaining DOC security. *See Grummett v. Rushen*, 779 F.2d 491, 495-96 (9th  
2 Cir. 1985) (“Similarly, routine pat-down searches, which include the groin area,  
3 and which are otherwise justified by security needs, do not violate the fourteenth  
4 amendment because a correctional officer of the opposite gender conducts such a  
5 search. . . . [W]e are satisfied that prison official in this case have struck an  
6 acceptable balance among the inmates’ privacy interests, the institution’s security  
7 requirements, and the female guards’ employment rights.”); and *Michenfelder v.*  
8 *Sumner*, 860 F.2d 328 (9th Cir. 1988). Therefore, summary judgment on  
9 Plaintiff’s equal protection claim is appropriate.

### 10 **C. Motion for Continuance**

11 While the cross-summary judgments were pending, Plaintiff filed a Motion  
12 for Continuance and to Compel Required Documents, seeking “Employee Conduct  
13 Policies, DOC Standard Operating Procedures (“SOP”), and the PREA Screening  
14 Questions for Transgender Offenders.” ECF No. 29 at 1.

15 Here, Plaintiff filed a response to Defendant’s cross-motion for summary  
16 judgment and reply to his own motion. ECF No. 25. As this matter is fully  
17 briefed, there is no basis for the Court to continue this matter. Moreover, Plaintiff  
18 must go through discovery channels to obtain the documents he seeks, and  
19 Defendant represents that he has made no such request for any discovery. ECF  
20 No. 30 at 3; *See Fed. R. Civ. P.* 26, 34, 37. Plaintiff has not established that a

1 continuance is necessary according to Fed. R. Civ. P. 56(d). Therefore, Plaintiff's  
2 motion for a continuance is denied.

3 **D. Revocation of In Forma Pauperis Status**

4 Pursuant to 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken *in forma*  
5 *pauperis* if the trial court certifies in writing that it is not taken in good faith." The  
6 good faith standard is an objective one, and good faith is demonstrated when an  
7 individual "seeks appellate review of any issue not frivolous." *See Coppedge v.*  
8 *United States*, 369 U.S. 438, 445 (1962). For purposes of 28 U.S.C. § 1915, an  
9 appeal is frivolous if it lacks any arguable basis in law or fact. *Neitzke v. Williams*,  
10 490 U.S. 319, 325 (1989).

11 The Court finds that any appeal of this Order would not be taken in good  
12 faith and would lack any arguable basis in law or fact. Accordingly, the Court  
13 hereby revokes Plaintiff's *in forma pauperis* status. If Plaintiff seeks to pursue an  
14 appeal, he must pay the full requisite filing fee.

15 **ACCORDINGLY, IT IS HEREBY ORDERED:**

16 1. Plaintiff's Motion for Summary Judgment (ECF No. 18) is **DENIED**.

17 2. Defendant's Cross Motion for Summary Judgment (ECF No. 21) is

18 **GRANTED.**

19 3. Plaintiff's Motion for Continuance and to Compel Required Documents

20 (ECF No. 29) is **DENIED**.

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1 4. Plaintiff's Equal Protection claim in violation of the Fourteenth  
2 Amendment of the United State Constitution is **DISMISSED** with  
3 prejudice. Thus, the remainder of the First Amended Complaint is  
4 **DISMISSED** with prejudice.

5 5. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of  
6 this Order would not be taken in good faith and would lack any arguable  
7 basis in law or fact. Plaintiff's *in forma pauperis* status is hereby  
8 **REVOKED**.

9 The District Court Executive is directed to enter this Order and Judgment  
10 accordingly, furnish copies to the parties, and **close** the file.

11 DATED October 29, 2021.



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*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge